

# Marfeel General Terms Of Service

*Last update: June 8th, 2020*

## I.- OBJECT

1.1. This document (hereinafter GENERAL TERMS OF SERVICE or the “Agreement”) and the ORDER FORM (separate document sent by email to the CLIENT, hereinafter ORDER FORM) are intended to regulate the conditions under which MARFEEL SOLUTIONS, S.L. (hereinafter MARFEEL) shall provide its services to its CLIENTS (hereinafter, jointly referred to as the PARTIES or, individually, as the PARTY), and the terms and conditions of the license on the platform developed and supported by MARFEEL (hereinafter the PLATFORM) granted to the CLIENT. The PLATFORM adapts, publishes and monetizes web content to be optimally displayed on desktop and mobile devices (in particular, but not exclusively, on web browsers) running different operating systems (hereinafter the OPTIMIZED VERSION).

1.2. The CLIENT may choose among the MOBILE and / or the DESKTOP VERSION(s) and among the following BUSINESS MODELS: advertising revenue share model (hereinafter ENTERPRISE PLAN); or one advertisement per page model (hereinafter ONE AD PER PAGE PLAN).

1.3. In the ENTERPRISE PLAN, MARFEEL shall pay the CLIENT a percentage of the GROSS REVENUE earned by the placement of ads in the OPTIMIZED VERSION (hereinafter NET REVENUE). Such ads will be provided by the partners and providers with whom MARFEEL may have agreements at each time (hereinafter the ADEXCHANGES).

1.4. With regard to the ONE AD PER PAGE PLAN, MARFEEL shall control and monetize one ad impression per viewed page using their selection of ADEXCHANGES, and receive the corresponding revenue generated by this ad impression. This impression will be placed on the second position, as the first impression and all other placements per viewed page are controlled and monetized by the publisher.

1.5. MARFEEL will optimize the CLIENT’s web site free of charge, notwithstanding the foregoing.

1.6. Additionally, in the ONE AD PER PAGE PLAN, the CLIENT will have the possibility of enabling the PROGRAMMATIC ENTERPRISE feature for any desired ad position, therefore transferring the management of this/these position(s) to MARFEEL. Hence, MARFEEL will continue to control and monetize the impression placed in the second position (receiving 100% of the corresponding revenue generated by this ad impression) and will take a percentage of the GROSS REVENUE of the positions that have the PROGRAMMATIC ENTERPRISE feature enabled. MARFEEL shall pay the CLIENT the NET REVENUE earned by the PROGRAMMATIC ENTERPRISE ad impressions in the OPTIMIZED VERSION.

1.7. If the CLIENT is a media group that owns several tenants, the VERSION(s) chosen (MOBILE and / or DESKTOP) as well as the BUSINESS MODEL will apply to each tenant individually, allowing the possibility of different options to operate within the same media group.

1.8. The CLIENT will be able to change from one plan to the other by email notification to MARFEEL. The current GENERAL TERMS OF SERVICE apply to both VERSIONS(s) (together or individually) as well as both BUSINESS MODELS, any modification or addition of features will not require a signed amendment document.

1.9. This service is aimed at professional CLIENTS, so the current regulations on consumers and users shall not be applicable.

## **II.- TERM AND TERMINATION**

2.1. The Initial Date of these GENERAL TERMS OF SERVICE is described in the ORDER FORM, to be computed as of the date of signature of such document.

2.2. Immediately after the Initial Date, it will begin the technical review of the CLIENT's web site which shall end with the OPTIMIZED VERSION on the Activation Date. This period is known as Go Live Process. During the Go Live Process and the Trial Period (30 calendar days following the Activation Date) either PARTY will be entitled to terminate this agreement for any reason, such as but without limiting to a lack of profitability or based on any other market or technical grounds (e.g. if MARFEEL's personnel detect a reason that prevents MARFEEL from developing the CLIENT's VERSION as initially expected).

It is expressly agreed that under no circumstances will either PARTY have the right to receive compensation or indemnification of any kind from the other PARTY as a consequence of this agreement being terminated in these circumstances. Hence, they irrevocably and expressly waive all claims they have against each other. If ONE OF THE PARTIES decides to terminate the contract, in accordance with this provision, it shall notify its decision in writing (courier or email).

2.3 After the Go Live Process and the Trial Period, the GENERAL TERMS OF SERVICE will be renewed indefinitely until such time that either PARTY decides to terminate it with a prior notice of at least three (3) months. If the CLIENT does not respect the three (3) month notice, MARFEEL will keep any remaining payment as a penalty.

2.4. The CLIENT is required to update his ads.txt file according to the specifications of MARFEEL. Being under the model of ENTERPRISE PLAN, if the client does not comply with this update within 15 days of receiving the notification through the CLIENT email, MARFEEL may block the pending payments to the CLIENT. On the other hand, being under the model of ONE

AD PER PAGE, MARFEEL may interrupt its services to the CLIENT. Furthermore, MARFEEL reserves the right to terminate the contract with the CLIENT, whatever its model may be.

2.5. In any event of termination, the PARTIES will be released from their duties, except those concerning confidentiality, Intellectual Property, applicable law and jurisdiction, duties of payment associated to the services provided by MARFEEL under this Agreement and any other obligations whose enforcement go beyond the termination of the GENERAL TERMS OF SERVICE. Additionally, upon termination of the GENERAL TERMS OF SERVICE, all rights and licenses granted to the CLIENT shall immediately terminate.

2.6. Clauses 2.1., 2.2., 2.3., 2.4., and 2.5 from these GENERAL TERMS OF SERVICE apply to each tenant individually and do not apply to the media group as a whole entity. Likewise, after the trial period, the CLIENT shall maintain and not reduce the following aspects in the OPTIMIZED VERSION provided to each individual tenant: 1) features optimized or provided by MARFEEL such as AMP; 2) geographical markets where users are located; 3) webpage sections covered; and 4) the serving of all kind of users, not discriminating in function of the means that the user access to contents such as paywalls. In case the CLIENT decides to reduce the traffic due to the aspects mentioned above, it shall be notified to MARFEEL with at least a three (3) months written notice. If the CLIENT does not respect the three (3) month notice, MARFEEL reserves the right to retain any payment until the CLIENT restores the previous conditions.

### **III.- PRICE AND PAYMENT**

3.1. In the ENTERPRISE PLAN and ONE AD PER PAGE PLAN with the PROGRAMMATIC ENTERPRISE feature enabled, MARFEEL shall pay the CLIENT the NET REVENUE earned by the placement of ads in the OPTIMIZED VERSION within SIXTY (60) days.

3.2. In accordance with the above mentioned provisions, MARFEEL will periodically monitor the NET REVENUE generated by the CLIENT, as well as other metrics, in the CLIENT's dashboard. MARFEEL will grant the CLIENT access to its dashboard.

3.3. MARFEEL shall send an invoice for each amount paid to the CLIENT (Invoices issued by the recipient), which will be provided to the CLIENT for the proper. If the CLIENT decides to issue their own invoice (only available if the CLIENT's NET REVENUE is above €1.000 per month –or the equivalent amount in USD), the CLIENT shall request it by email to MARFEEL's Finance Department ([finance@marfeel.com](mailto:finance@marfeel.com)). In this case, every month, MARFEEL shall send a Pro-Forma invoice and the corresponding payment will be done within SIXTY (60) days from the date of receipt of the invoice issued by the CLIENT at MARFEEL's address: Marfeel Solutions SL, Avenida Josep Tarradellas 20-30, 6<sup>a</sup> planta, 08029 Barcelona (Spain) and/or sent to the following email address: [finance@marfeel.com](mailto:finance@marfeel.com).

3.4. If the CLIENT's NET REVENUE is below €1.000 per month (or the equivalent amount in USD) payment will be made through PAYPAL in EUROS to the email account specified by the CLIENT.

If the CLIENT's NET REVENUE is above €1.000 per month (or the equivalent amount in USD) payment will be made through wire transfer to the bank account specified by the CLIENT and in the currency chosen by him: EUROS or USD. Monthly amounts cannot be rolled over to facilitate wire transfer payment.

3.5. If MARFEEL suffers a delay in the collection of payments from the ADEXCHANGES or if the ADEXCHANGES do not pay according to the agreed deadline and conditions for any reason, MARFEEL reserves the right to transfer this situation to the CLIENT. This may result in potential delays or blockage of the payment until the situation is completely resolved and all outstanding amounts are collected by MARFEEL. Furthermore, MARFEEL will carry out any necessary legal action to ensure the most efficient collection of amounts due. In the event of a situation as defined here, MARFEEL will provide any necessary documentation to the CLIENT as proof of any delay or change in the receipt of payment. As well, the CLIENT declares that MARFEEL will not be held responsible for such a delay and/ or blockage of payments by the ADEXCHANGES and thus, will not be held liable and waive any claim for these reasons.

## **IV.- INTELLECTUAL PROPERTY RIGHTS**

### **4.1. License of use**

4.1.1. MARFEEL grants the CLIENT a non-exclusive, worldwide and non-assignable license to access and use its technology PLATFORM. Likewise, MARFEEL source code belongs exclusively to MARFEEL and it is for the exclusive use of the CLIENT, so it cannot be shared with or used by any third party for any purpose. Consequently, in no case is the CLIENT authorized to disclose, distribute, grant a license or otherwise make available the source code to third parties (including advisors, consultancy companies, etc). This license to use is restricted for the term of these GENERAL TERMS OF SERVICE and limited to the necessary rights to set up and maintain the OPTIMIZED VERSION of the WEBSITE. MARFEEL assumes no responsibility for unauthorized access to the source code provided by the CLIENT to third parties. The CLIENT shall, therefore, defend, indemnify and hold MARFEEL harmless against any third party claim, and shall be liable for any damages, losses and costs caused to third parties as a result of the breach of this clause.

4.1.2. In order for the OPTIMIZED VERSION to be accessed by the users of the WEBSITE, the CLIENT must introduce a code provided by MARFEEL. The WEBSITE will automatically redirect all users who access the WEBSITE to the OPTIMIZED VERSION.

4.1.3. The PLATFORM functionalities and technical features available to the CLIENT will vary according to his number of visits.

## **4.2. Acknowledgement of rights**

4.2.1. MARFEEL is the owner of all the Intellectual Property rights over the PLATFORM, the trademarks, distinctive signs and contents associated to it, which have not been generated by clients, partners or MARFEEL collaborators.

4.2.2. The CLIENT warrants that it owns all the contents offered through its WEBSITE, which will be hosted in MARFEEL's PLATFORM in order to be published on the OPTIMIZED VERSION. The CLIENT undertakes to indemnify and hold MARFEEL, its subsidiaries, its directors, officers, agents and / or employees harmless from and against any and all damages, expenses, losses, liabilities and costs arising out of or in connection with any claims, demands or administrative proceedings opened, initiated or addressed against MARFEEL, its subsidiaries, its directors, officers, agents and / or employees as a result of any infringement of rights caused by the contents published in the WEBSITE by the CLIENT, and will reimburse MARFEEL for all necessary or convenient expenditure in connection with such claims.

4.2.3. In order to allow the processing and publishing of the contents of the WEBSITE in the OPTIMIZED VERSION, the CLIENT specifically agrees such processing and publishing and grants to MARFEEL a non- exclusive and free license of use over all the contents published in the WEBSITE, with no geographic limitation and for the term of these GENERAL TERMS OF SERVICE. This license will be extended as it is necessary to permit the fulfillment of MARFEEL's duties, including the publishing of the trademark and/or the logo of the CLIENT in MARFEEL's documents as case of use or example of client.

4.2.4. MARFEEL reserves the right to insert its logo or distinctive sign in the OPTIMIZED VERSION, with a link to its home page.

4.2.5. Any dispute, controversy or claim arising under, out of, or relating to the provisions set in the Intellectual Property section in this contract (section IV), or the breach thereof, will be settled in accordance with the WIPO Arbitration Rules. The arbitration will be conducted in the city of Barcelona. The language of the arbitration will be English. Decisions of the arbitrator will be binding on the parties and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

4.2.6. The breach on the provisions set out in this section IV, grant MARFEEL the right to compensation and the claim for damages. The right to indemnification herein provided shall not be exclusive of any other rights to which MARFEEL may be lawfully entitled.

## **V.- NON DISCLOSURE AND CONFIDENTIAL INFORMATION**

5.1. Confidential Information means any information that has been disclosed to any of the PARTIES as a result of the performance of the rights and duties described hereto, which is not available for the public domain as, for example, any information related to business, customers, operations, facilities, procedures, methods, transactions, knowhow or any other aspect of the activity of the PARTIES.

5.2. The PARTIES agree and undertake to maintain the Confidential Information in the strictest secrecy. No PARTY shall disclose the Confidential Information for any purpose different to the purpose associated to the present GENERAL TERMS OF SERVICE.

5.3. Notwithstanding the above mentioned, Confidential Information may be disclosed as required by any governmental agency, provided that before disclosing such information the disclosing PARTY provide to the other PARTY with reasonable advance written notice of the agency's request for the information, to enable the non-disclosing PARTY to exercise any rights it may have to challenge or limit the agency's authority to receive such Confidential Information.

5.4. Upon termination of the present GENERAL TERMS OF SERVICE, each PARTY, upon request of the other, will return or destroy all copies of all of the other's Confidential Information in its possession or control (unless impracticable), except to the extent such Confidential Information must be retained pursuant to applicable law or a PARTY's document retention policy.

## **VI.- PRIVACY**

### **6.1.Data Processing**

6.1.1. MARFEEL does not collect personal data. Likewise, MARFEEL does not link any data to personal data which identifies a natural person through its services to its CLIENTS.

6.1.2. MARFEEL, as Data Processor, undertakes to process personal data on behalf of the CLIENT following their instructions, according to article 28 of the General Data Protection Regulation (GDPR).

6.1.3. In any case, the CLIENT will grant MARFEEL a permanent access to the data concerning traffic, visits, unique users, revenues and, in general terms, to the main analytics data of the WEBSITE and the OPTIMIZED VERSION for the previous THREE (3) months, during the term of the contract, and for the following THREE months after the termination of the contract, segregated, at least, by origin, browser, operating system and URL.

6.1.4. After the delivery of the services, upon CLIENT's written request, MARFEEL will destroy the above mentioned information or restore them to the CLIENT. If there is not any written request by CLIENT, MARFEEL will destroy this information by default after 7 years of the delivery of the service.

6.1.5. The Data Processing Agreement is found on the following link: [www.marfeel.com/data-processing-agreement/](http://www.marfeel.com/data-processing-agreement/)

## **6.2. Consent Management Platform (CMP)**

6.2.1. MARFEEL shall provide technical mechanisms to the CLIENT (publishers) in order for him to obtain the final user's legitimate consent and transfer it to third parties who may require it (such as AD EXCHANGES, DATA ANALYTICS COMPANIES), for advertising and internet usage purposes. MARFEEL has implemented a Consent Management Platform (hereinafter CMP) that follows the IAB Europe consent framework's standards.

6.2.2. The CLIENT shall be the only PARTY responsible for the correct use of the CMP and exempts and holds MARFEEL harmless of all claims and actions of third parties relating to the processing of the CLIENTS' final users' personal data without consent and/or legal basis.

6.2.3. MARFEEL shall only provide the technological mechanisms to those website sections under the MARFEEL PLATFORM. The CLIENT shall be responsible for the implementation and management of its own consent framework on those website sections which are not under the MARFEEL PLATFORM, to be compliant with those third parties who may require it (AD EXCHANGES, DATA ANALYTICS COMPANIES...).

6.2.4. Without prejudice to MARFEEL implementing the CMP for the CLIENT, it is the responsibility of the CLIENT to have updated the legal documents of their privacy policy and cookies policy, as well as providing the corresponding URLs to MARFEEL.

## **VII.-LIABILITIES AND SERVICES**

7.1. MARFEEL will propose the CLIENT a prototype of the final display of the OPTIMIZED VERSION before placing it into production. The prototype will include spaces designated for the publication of advertisements. The publication of the code provided by MARFEEL to the CLIENT in the WEBSITE shall be equivalent to accepting the prototype proposed by MARFEEL.

7.2. MARFEEL will provide its services with the utmost care, in accordance with industry standards. The PLATFORM and the services will be provided "AS IS" without any further warranty of any kind (express or implied) including, without limitation, the implied warranties of merchantability and fitness for a particular purpose, which warranties are hereby expressly disclaimed.

7.3. CDN services and limitation on non-html caching: As part of MARFEEL services to PREMIUM CLIENTS, MARFEEL may offer the CLIENT usage of MARFEEL CDN Services.

The CLIENT acknowledges that MARFEEL's service is offered as a platform to cache and serve web pages and websites and is not offered for other purposes, such as remote storage. Accordingly, the CLIENT understands and agrees to use the service solely for the purpose of hosting and serving web pages as viewed through a web browser or other application and the Hypertext Markup Language (HTML) protocol or other equivalent technology. MARFEEL's service is also a shared web caching service, which means a number of customers' websites are cached from the same server. To ensure that MARFEEL's service is reliable and available for the greatest number of users, a CLIENT's usage cannot adversely affect the performance of other CLIENTS' sites. Additionally, the purpose of MARFEEL's service is to proxy web content, not store data. Using an account primarily as an online storage space, including the storage or caching of a disproportionate percentage of pictures, movies, audio files, or another non-HTML content, is prohibited. The CLIENT further agrees that if, at MARFEEL's sole discretion, the CLIENT is deemed to have violated this section, or if MARFEEL, in its sole discretion, deems it necessary due to excessive burden or potential adverse impact on MARFEEL's systems, potential adverse impact on other CLIENTS, server processing power, server memory, abuse controls, or other reasons, MARFEEL may suspend or terminate the CLIENT account without notice to or liability to him.

7.4. MARFEEL will hire the services associated to its PLATFORM, such as the hosting, to the suppliers that it deems appropriate. Upon request by the CLIENT, MARFEEL will provide the name of the engaged providers.

7.5. MARFEEL will make its best efforts to ensure the availability, integrity and security of the PLATFORM and all the contents hosted on it. Without limiting the foregoing, MARFEEL cannot assume any responsibility for the damages (whether direct or indirect, including without limitation loss of profits, business interruption or loss of information) arising from or related to the use, misuse or inability to use the OPTIMIZED VERSION by the CLIENT or third parties, or because of the publication of the advertising content in the OPTIMIZED VERSION by advertisers, ADEXCHANGES or any other provider, selected by MARFEEL or by the CLIENT. At the request of the CLIENT, MARFEEL will communicate the name of the collaborator or provider responsible for the advertising content published through the OPTIMIZED VERSION, so that the CLIENT may require the relevant responsibilities.

7.6. Except for a liability arising from a PARTY's breach of the provisions set on Section IV, the PARTIES agree that their maximum liabilities will be limited to the amount effectively paid by either the CLIENT or MARFEEL (depending on the BUSINESS MODEL as defined in clause 1.2) during the THREE (3) months prior to the date of the claim.



## VIII.- GENERAL CLAUSES

8.1. Neither PARTY may assign, in whole or in part, its rights or duties under these terms to a third PARTY without the prior written consent of the other PARTY, with the exception of a merger, acquisition or sale of all or substantially all of the PARTY's assets, stock or business or any other corporate transaction. Notwithstanding the foregoing, Marfeel may assign this contract to any of its Affiliates without the CLIENT prior consent.

8.2. The CLIENT shall direct all communications related to these conditions to MARFEEL's address: Marfeel Solutions SL, Avenida Josep Tarradellas 20-30, 6ª planta, 08029 Barcelona (Spain); TAX ID: ESB65651259; email: [finance@marfeel.com](mailto:finance@marfeel.com)

8.3. MARFEEL shall direct all communications aimed to the CLIENT to the address appointed by the CLIENT in the ORDER FORM.

8.4. Notifications conducted this way will take effect as of the date of receipt or, alternatively, from the tenth day following shipment.

8.5. The relationship between the PARTIES shall be governed by the terms and conditions set forth in these GENERAL TERMS OF SERVICE approved by the PARTIES and the ORDER FORM, which must be jointly and uniquely interpreted. All terms and conditions specified under the "Observations" section in the ORDER FORM will prevail over the present document (GENERAL TERMS OF SERVICE). Any communication - written or oral - that is not reflected in the GENERAL TERMS OF SERVICE or in the ORDER FORM will not be valid, except in the case of a contract termination, which shall be governed by the means contemplated in Section II.

8.6. MARFEEL reserves the right to update this document periodically, in order to adapt it to its new products, services, price and any other associated conditions. The current applicable version of these general conditions of use can be found at [www.marfeel.com/gtos.html](http://www.marfeel.com/gtos.html). When a unilateral novation of the conditions may constitute a relevant and substantial change regarding the previous conditions, the CLIENT shall be entitled to request for the termination of the service during the THIRTY (30) days after receiving the novation, unless it has engaged the annual plan and the amendment does not involve the payment of an additional amount in the same period.

8.7. After the termination of these GENERAL TERMS OF SERVICE, for any reason, MARFEEL will delete from its PLATFORM the OPTIMIZED VERSION and the contents from the WEBSITE, owned by the CLIENT. The CLIENT shall delete the link to the OPTIMIZED VERSION.

8.8. These GENERAL TERMS OF SERVICE shall be interpreted, governed, and construed in accordance with the Spanish laws, excluding any other national, regional or local law. Waiving any other jurisdiction, the PARTIES

agree to submit any dispute or discrepancy originated by these conditions to the exclusive jurisdiction of the Courts of the city of Barcelona.

8.9. In the event that any provisions of these GENERAL TERMS OF SERVICE are held invalid, unlawful or unenforceable by a Court of competent jurisdiction or by any future legislative act, such act shall not limit or preclude the validity or enforceability of any other provisions of these GENERAL TERMS OF SERVICE. Any such provision held invalid shall be substituted by a provision of similar effect reflecting the original intent.